

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 November 2006

Case No.: 2006-STA-00025

In the Matter of:

BENN C. KINGSBURY,
Complainant

v.

WEST WISCONSIN TRANSPORT, INC.,
Respondent

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (herein “the STAA”), and the regulations promulgated thereunder at 29 C.F.R. Part 1978. On January 23, 2006, Complainant, Benn C. Kingsbury, filed a complaint of discrimination against Respondent, West Wisconsin Transport, Inc., which was investigated by the Occupational Safety and Health Administration (“OSHA”). On March 31, 2006, OSHA determined that the complaint was without merit. On April 12, 2006, Complainant appealed the findings of OSHA and the case was referred to the Office of Administrative Law Judges.

Subsequent to the Notice of Hearing in this matter, the parties negotiated and executed a Settlement Agreement and Release of Claims (“Settlement”) which purports to resolve all issues pending before the undersigned. The Settlement is signed by Complainant and the representative of the named Respondent. The Settlement was filed with the undersigned on November 2, 2006, along with Complainant’s Motion to Approve Settlement and Dismiss Proceeding With Prejudice.

Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary’s findings “if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board ... or the ALJ.” 29 C.F.R. § 1978.111(d)(2). Under the STAA, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc.*, Case No. 1992-STA-8 (Sec’y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board as the case may be.” *Id.* The undersigned is required to determine if the terms of the Settlement as submitted represent a fair, adequate, and reasonable settlement of the complaint. 29 C.F.R. § 1978.111(d)(2).

The Settlement provides that Complainant releases Respondent from claims arising under the STAA, as well as under various other laws. This review is limited to whether the terms of the Settlement are a fair, adequate, and reasonable settlement of Complainant's allegations that Respondent violated the STAA. *Kidd v. Sharron Motor Lines, Inc.*, Case No. 87-STA-2 (Sec'y July 30, 1987); *Poulos v. Ambassador Fuel Oil Co.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, @ p. 2. As was stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*,

The Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Euncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

Examination of the Settlement establishes that its terms constitute a fair, equitable, adequate, and reasonable settlement of the complaint. The Settlement sets forth reasonable provisions, and a comprehensive and unrestricted release of the parties, each to the other, of all claims deriving from acts or omissions which occurred prior to the effective date of the Settlement. The confidentiality provision and constraints against Complainant and Respondent are consistent with public policy. The Settlement provides that it is intended to be the entire agreement between the parties, and that the terms of the Settlement are severable in the event that any portion of the Settlement is found to be unenforceable.

Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board must issue the final order of dismissal of an STAA complaint resolved by settlement. *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the Settlement Agreement and **DISMISS** the complaint, with prejudice.¹

A

JOSEPH E. KANE
Administrative Law Judge

NOTICE OF REVIEW: The Administrative Law Judge's Recommended Decision and Order Approving Settlement, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC, 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

¹ The hearing scheduled to commence on November 28, 2006, is hereby **CANCELED**.

Within thirty (30) days of the date of issuance of the Administrative Law Judge's Recommended Decision and Order Approving Settlement, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the Administrative Law Judge's Decision and Order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.